OGC 76-2484
12 May 1976

MEMORANDUM FOR: Agency NSSM-229 Members

SUBJECT : Developments Under NSSM-229

1. The Jeanne Davis subgroup under NSSM-229 has been meeting once a week for the last several weeks, addressing itself to various proposed changes in language which have been offered by one or more departments represented on the group. A number of changes have been addressed and rejected and (I believe) no changes in language have been adopted concerning the sections thus far considered. These are sections 1, 2, 3, 4, 5A and B. Some changes have been tentatively adopted and I will get copies when available for internal CIA consideration.

2. The group has accepted the CIA proposals that subsection 5(B)(4) of the Order is too narrow and CIA has been invited to propose substitute language. I am considering submitting the language attached at TAB A which I think is an improvement in that the existing language apparently would protect only against disclosure where "immediate" jeopardy would result and where it seems certain that there would be jeopardy. Additionally the current language is not clear in that it refers only to jeopardy to life. The proposed substitute language however might be criticized as too broad.

3. The Davis group is proceeding with some speed now and I believe in the not distant future will have reviewed the entire Order and the implementing NSC Directive. In my memorandum of 18 February (TAB B), I indicated a number of problem areas but we have not pressed for major changes or indeed any changes other than the above proposed change in 5(B)(4). I think Directorate representatives and their principals should address the Order and Directive in terms not only of the specifics of sections and paragraphs but the impact of the Order as a whole. After the NSSM-229 review is completed and the Order revised, I think the Agency will not be able to defend any of our actions or inactions on the basis that the Order requires more manpower or money than is available or that the Order imposes

unreasonable administrative burdens or for any other reason. I suggest that each Directorate and component representative on the Agency NSSM-229 group examine each of the many requirements in the Executive Order and the NSC Directive, all of which, I believe, are spelled out in [redacted] and conclude that each requirement is worthwhile and workable or propose deletion or modification. STAT

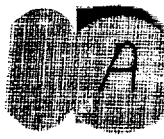
4. At TAB C is a Memorandum for the Record of 26 April in which I indicate several possible problem areas.

5. I will attempt again in the near future to convene a meeting of the NSSM-229 group to report further on progress of the interagency group (Davis) and to discuss these and related problems.

[redacted] STAT

Associate General Counsel
Chief, General Law Division

Attachments



Approved For Release 2005/05/23 : CIA-RDP82M00591R000500040003-1

(4) Classified information or material the disclosure of which reasonably could be expected to place a person's life, liberty or property in potential jeopardy.

Approved For Release 2005/05/23 : CIA-RDP82M00591R000500040003-1

TAB B

18 February 1976

MEMORANDUM

SUBJECT: E.O. 11652 Issues for Consideration Under NSSM 229

Issues in E.O. 11652 to be raised with interagency group:

a. Sources and methods information should be freed from those aspects of the Executive Order which put authority in ICRC, which require declassification review upon request or which subject information to the GDS. The approach should be that even the classification aspects of such information should incorporate the above. The thought is that since sources and methods information is subject to protection by the DCI, even if it is also subject to classification and protection under the Executive Order, the decontrol features of E.O. 11652 and ICRC should not be involved.

b. The Order should deal with the problem of derivative authority. The Order should provide for and reflect the fact that a decision to classify the subject matter and area of interest, etc. need be and indeed should be made only once (until reversed or changed). Documents which thereafter include any such information would not involve a new classification decision. For example, a DDO component begins the consideration of a possible new activity or project. At the appropriate stage, a DDO official concludes that the information warrants classification. He makes a decision to that effect. That classification decision thereupon is made, and other Government employees who create documents concerning that project or activity are not making new classification decisions. They are simply concluding that their document includes information which has been classified by an authorized official. The present system whereby personnel all over the Government make numerous classification decisions undoubtedly causes conflicting decisions. What is needed is a legitimation of so-called "derivative" classification authority.

c. ICRC is charged with more supervisory and other duties than it can perform as presently constituted. It needs to be provided with a massive increase of funds and people, or its duties should be reduced to a realistic level. Probably an adequate increase in resources is out of the question. Further, a committee of subordinates authorized and directed to direct certain activities of their own departments, and those of other departments as well, is an administrative absurdity.

d. The requirement for the data index system should be abolished. I believe it is true that the data index has not been unduly burdensome to CIA, since we had an index system in being before the requirement of the Executive Order came about. This is so only because ICRC has acquiesced in Agency accomplishing compliance with the Order by rather minor modifications to our existing index. A different approach by ICRC, that is, if ICRC were to require that we maintain a data index system involving all classified CIA documentation, or any major increase in the number or category of documents handled by the system simply could not be made without a great deal more money and people. Further, it has virtually no E.O. 11652 value.

e. The authority to exempt from the GDS should be separated from the authority to classify at Top Secret, that is, the former authority should be available for all employees authorized to classify at any level.

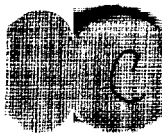
f. The provision concerning classification abuses should be deleted. It is not clear from the Order what is meant by classification abuses, and ICRC has struggled with this term on several occasions. In any event, the provision appears to contemplate that employees at middle and low levels are deliberately overclassifying in violation of the Order to hide their mistakes, to support a point of view or for other purposes not appropriate under the Order. I think this simply does not take place. If there are deliberate overclassification decisions for those purposes, probably they are made by high level officials and are not readily controllable by this kind of a provision in an Executive order.

g. The Executive Order should require secrecy agreements. The new Executive Order includes a provision to that effect,

but the protections appropriate to E.O. 11652 should not be left to the vagaries of another Executive order.

STAT

Associate General Counsel



Approved For Release 2005/05/23 : CIA-RDP82M00591R000500040003-1

TAB C

26 April 1976

MEMORANDUM FOR THE RECORD

SUBJECT: Definitions of Top Secret, Secret and Confidential

1. The interagency working group on NSSM-229 (Jeanne Davis group) has begun consideration of specific language to amend Executive Order 11652 in various areas. Language changes are being drafted responsive to some of the suggestions submitted to the parent interagency NSSM-229 Committee (Hyland group) following the first meeting of that Committee on 17 February 1976.

2. The Davis group is now considering whether to revise the definitions of Top Secret, Secret and Confidential and tentatively has concluded not to recommend changes. There are, however, at least three items I think CIA might want to consider with the view to proposing changes in those definitions. As my following comments reveal, these are to me gnawing problem areas, but I am by no means certain as to the specifics of the problems, much less possible solutions.

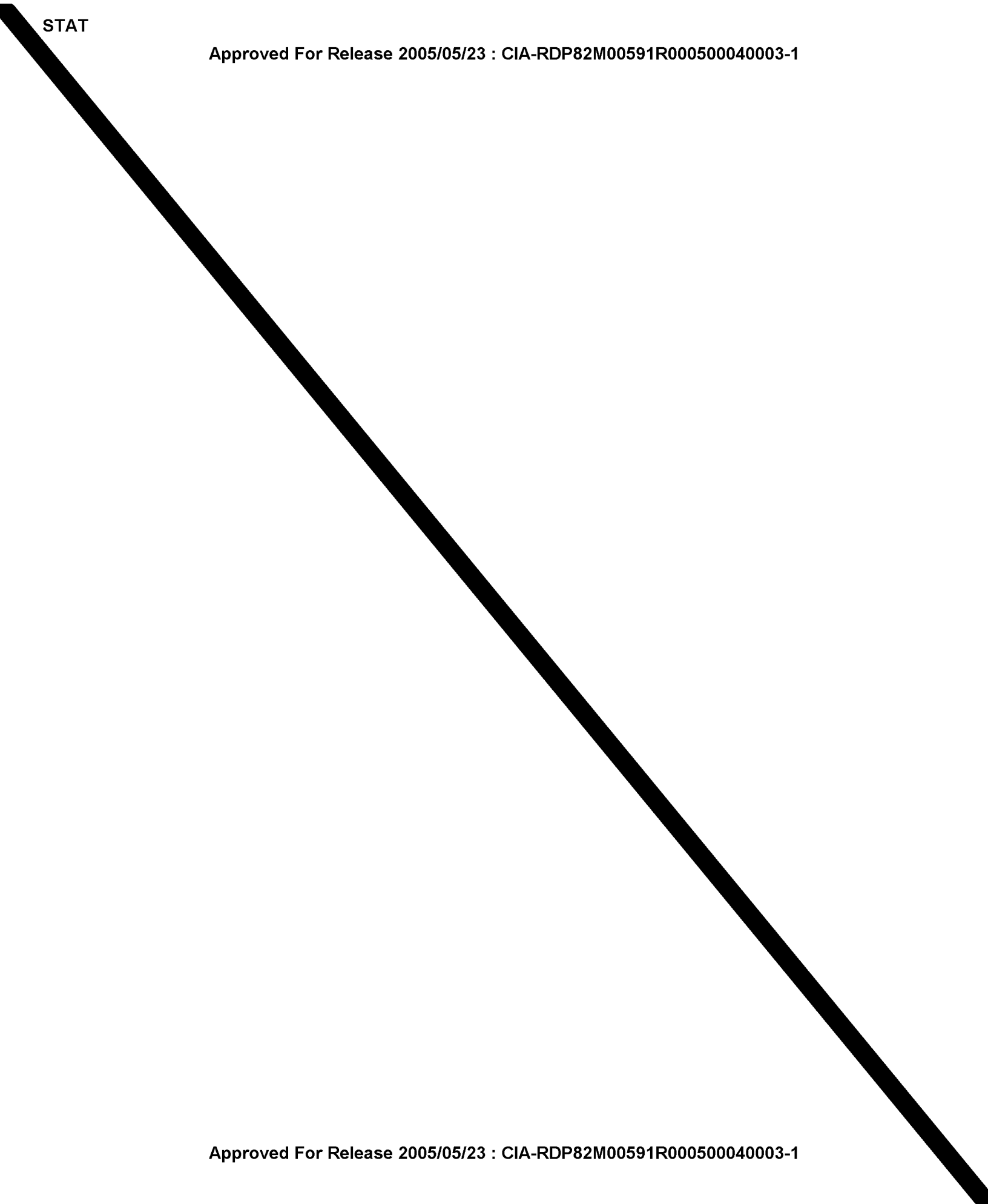
a. Are the present three definitions adequate insofar as they cover sources and methods information? That term, that is, "intelligence sources and methods," is not included anywhere in any of the three definitions, including the examples which are included as part of the definitions of Top Secret and Secret. The definitions do, however, make various references to intelligence or intelligence operations. In addition, the language providing for exemptions from the General Declassification Schedule (section 5(B)(2)) does specifically refer to "intelligence sources or methods." The pending CIA-sponsored criminal legislation concerning unauthorized disclosure of sources and methods information I believe now applies only with respect to sources and methods information which is also information classified under the Executive Order. The Dietel project to establish a regulatory system to protect sources and methods information also may have to be restricted only to sources and methods information which is classified, but this is by no means settled. I am not clear that any or all of these considerations and pending actions mean that the definitions should be modified, but perhaps they should and in any event the Agency should consider the matter.

b. I have long felt that the definitions, in conjunction with other provisions of the Executive Order, may be inadequate in one respect which perhaps is peculiar to the intelligence agencies. The Order contemplates that information recorded in documents is to be classified if its disclosure would damage national security. Are there circumstances in which the disclosure of a document as a CIA document would damage national security even though the information on the face of the document would not do so? A memorandum identified as a CIA memorandum which does not name an intelligence source or constitute an intelligence estimate or refer to the development of a piece of equipment or the conducting of an intelligence operation might, by such identification, also identify an individual or organization as CIA connected, to the detriment of national security. Are there other situations or circumstances in which national security information would be revealed, and national security damaged, by the disclosure of a document which on its face does not contain national security information? Are changes in the Order appropriate and, if so, what changes?

c. Is the "mosaic" nature of intelligence information adequately treated and protected by the Executive Order? If not, what changes are in order?

STAT

Associate General Counsel



Approved For Release 2005/05/23 : CIA-RDP82M00591R000500040003-1